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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.2714 of 2021

and

CMP.No.15611 of 2021

M/s.Bharti AXA General Insurance Company Limited,
No.965, 2nd Floor, Avinshi Road,
Coimbatore 641037.

...Appellant

Vs.

1. V.Vanitha
2. Minor V.Shivani
3. Minor V.Shruthika
4. R.Palanisamy
5. Kalaivani
- A.Dinesh (died)
- M.Sivakumar (died)

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 25.10.2019 made in MCOP.No.1153 of 2017 on the file of the Motor Accident Claims Tribunal/V Additional District Court, Coimbatore.

For Appellant : Mr.K.Poomalai

For Respondents : Mr.C.Veeraraghavan

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

The appeal is heard through video conferencing.

2. This appeal arises out of the award passed by the Motor Accident Claims Tribunal/V Additional District Court, Coimbatore in MCOP.No.1153 of 2019.

3. The brief facts of the case are that the legal heirs



of the deceased Venkata Ramanan, who died in a accident that had occurred on 15.07.2017, filed the claim petition seeking compensation of Rs.30,00,000/-. It is the case of the claimants that on 19.05.2017, the deceased was driving a Lorry bearing Registration No.TN-30-L-4936 from Mettupalayam to Trichy on the National Highway 67. At that time, a Mahendra Car bearing Registration No.TN-37-DC-0008, which was coming from the opposite direction, driven by its driver in a rash and negligent manner, rammed the Lorry. In the accident, the deceased, who was on the wheels, was caught in between his seat and the steering of the Lorry. In the impact, both the vehicles engulfed in flames, in which, the deceased Venkata Ramanan and two persons in the car, died on the spot. The claimants would further state that the deceased was 40 years at the time of the accident and he himself is a driver by profession and earning Rs.25,000/- per month and also getting daily batta of Rs.300/-.

4.The appellant resisted the claim petition by filing counter statement, in which, it is stated that only the deceased was responsible for the accident and hence, the appellant is not liable to pay compensation. They also disputed the age, income and occupation of the deceased.

5. Before the Tribunal, on the side of the claimants, the first claimant gave evidence as PW1 and also examined 2 other witnesses as PWs.2 and 3 and Exs.P1 to P26 were marked on their side. On the side of the respondents, no oral and document evidence was adduced.

6. The Tribunal, on an appreciation of the evidence produced by the claimants, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the Car. By coming to such conclusion, the Tribunal awarded compensation of Rs.26,01,250/- along with interest at 7.5% per annum and directed the appellant/Insurance Company to pay the above compensation. Questioning the award, the present appeal has been filed by the Insurance Company.

7. Mr.K.Poomalai, learned counsel appearing of the appellant/Insurance Company would submit that the monthly income taken by the Tribunal for the deceased was on the higher side. Further, the Tribunal has not followed the legal precedents of the Hon'ble Apex Court while arriving at the quantum.

8. Per contra, Mr.C.Veeraraghavan, learned counsel appearing for the claimants argued justifying the award passed by the Tribunal.



9. Heard the rival submissions and perused the materials available on record.

10. In the instant case, it is not in dispute that the deceased Venkata Ramanan met with an accident and died on 19.05.2017 and his legal heirs, viz., his wife, 2 minor children and parents, are the claimants. In the claim petition, it has been clearly stated that the deceased died at the age of 40 years and he was earning Rs.25,000/- per month. The Tribunal after verifying the driving license of the deceased, which was marked as Ex.P10 had taken the age of the deceased as 40 years. PW2, the employer of the deceased deposed that the deceased was paid Rs.15,000/- per month as salary and Rs.300/- was paid towards batta per day. The Tribunal, considering the evidence of PW2 and by relying upon the decision of this Court reported in 2019 (1) TNMAC 54 DB (Andal and other vs. the New India Assurance Co. Ltd.), had taken the income of the deceased at Rs.15,000/- and added 25% towards future prospects and fixed income at Rs.18,750/- [15,000 + 3,750]. Then, considering the age of the deceased, multiplier "15" was applied and the total loss of income was arrived at Rs.33,75,000/- [18,750 x 15 x 12]. Out of the total income, 1/4 of the amount was deducted towards personal expenses and thus, the Loss of Dependency was determined as Rs.25,31,250/- [33,75,000 - 8,43,750]. In addition that, the Tribunal awarded a sum of Rs.15,000/- towards Loss of Estate; Rs.40,000/- towards Loss of Consortium and Rs.15,000/- towards Funeral Expenses. In total, the Tribunal has awarded a sum of Rs.26,01,250/- along with interest at 7.5% from the date of claim petition till the date of deposit. In our considered view, the award of the Tribunal is fair and reasonable, which does not warrant interference by this Court. In fine, the award is confirmed and the appeal is liable to be dismissed.

11. In such view of the matter, this Civil Miscellaneous Appeal is dismissed as devoid of merits. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants 1, 4 and 5 are permitted to withdraw their share as apportioned by the Tribunal, less the amount already withdrawn, if any, together with proportionate interest and costs. Insofar as the minor claimants 2 & 3 are concerned, their respective shares shall be deposited by the Tribunal in any Fixed Deposit Scheme in any one of the Nationalised Banks and it shall be renewed periodically till they attain majority and the interest accrued thereon shall be withdrawn by the first



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claimant/mother, once in three months. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The V Additional District Court,
Coimbatore/
Motor Accident Claims Tribunal

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.Poomalai, Advocate SR.No.50610

+1cc to Mr.C.Veeraraghavan, Advocate SR.No.50268

C.M.A. No.2714 of 2021

GSM(CO)
GN(21/12/2021)